



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2011-0925; FRL- 9669-3]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania;
Nonattainment New Source Review Rules**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania on August 9, 2007. This revision pertains to the preconstruction permitting requirements of Pennsylvania's nonattainment New Source Review (NSR) program. The revision is intended to update Pennsylvania's nonattainment NSR regulations to meet EPA's 2002 NSR Reform regulations (NSR Reform), and to satisfy the requirements related to antibacksliding. Additionally, the proposed revision makes clarifying changes to regulations that are not related to NSR Reform. This action is being taken under the Clean Air Act (CAA).

DATES: Effective Date: This final rule is effective on [insert date 30 days from date of publication].

ADDRESSES: EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2011-0925**. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during

normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gerallyn Duke, (215) 814-2084, or by e-mail at

Duke.Gerallyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On January 20, 2012 (77 FR 2937), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of a SIP revision pertaining to preconstruction permitting requirements under Pennsylvania’s nonattainment NSR program. The formal SIP revision was submitted by the Pennsylvania Department of Environmental Protection (PA DEP) on August 9, 2007.

The history of this SIP, the NSR Reform Program, and *South Coast Air Quality Management District v EPA*¹ (*South Coast*) decision regarding antibacksliding provisions of the Eight-Hour Ozone National Ambient Air Quality Standard (69 FR 23951), are described in the NPR. The purpose of this SIP revision is to incorporate changes to Pennsylvania’s nonattainment NSR rules made as a result of EPA’s 2002 NSR Reform, and to address the antibacksliding provisions of the *South Coast* decision.

¹ In 2006, the United States Court of Appeals for the District of Columbia Circuit found in *et al*, 472 F.3d 882 (D.C. Cir 2006) that NSR is a control measure and to weaken its requirements under the SIP would constitute impermissible backsliding under the CAA.

In summary, the current NSR Reform Rules: (1) provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected actual methodology for determining whether a major modification has occurred; and (3) allow major stationary sources to comply with Plantwide Applicability Limits (PALs) to avoid having a significant emissions increase that triggers the requirements of the major NSR program (68 FR 63021 and 72 FR 32526). The 2002 NSR Reform Rules require that state agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. In addition, as a result of the *South Coast* decision, all one-hour ozone NAAQS major NSR requirements must remain in place where classifications under the newer eight-hour ozone standard imposed less stringent NSR requirements.

II. Summary of SIP Revision

The SIP submittal consists of changes to 25 Pa. Code Chapter 121, General Provisions, and 25 Pa. Code Chapter 127, Construction, Modification, Reactivation, and Operation of Sources. This action will update Pennsylvania's nonattainment NSR regulations as previously approved on December 9, 1997 (62 FR 64722). It will incorporate for the first time the 2002 "NSR Reform" provisions into Pennsylvania's nonattainment NSR program, and will satisfy the requirements of the D.C. Circuit Court decision in *South Coast* regarding antibacksliding. The proposed regulations were adopted by Pennsylvania and became effective on May 19, 2007. Other specific requirements of the regulations and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving the August 9, 2007 SIP revision, amending Pennsylvania's NSR construction,

modification, reactivation and operation permit programs at 25 Pa. Code Section 121.1 and 25 Pa. Code Chapter 127, as a revision to the Pennsylvania SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a).

Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in Pennsylvania, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to Pennsylvania's nonattainment NSR program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 19, 2012

W. C. Early,
Acting Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN—Pennsylvania

2. In § 52.2020, the table in paragraph (c)(1) is amended by:

- a. Adding entries for Title 25, Sections 127.201a, 127.203a, and 127.218 in alphanumerical order.
- b. Revising the existing entries for Title 25, Sections 121.1, 127.13, 127.201, 127.202, 127.203, 127.204 through 127.210, 127.212, 127.213, 127.215, and 127.217.
- c. Removing the entries for Sections 127.211 and 127.214.

The amendments read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) ***

(1) ***

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Title 25-- Environmental Protection				
Article III--Air Resources				
Chapter 121 - General Provisions				
Section 121.1	Definitions	5/19/07	[Insert Federal Register publication date] [Insert page number]	Added 36 terms Revised 9 terms Removed 5 terms

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
			where the document begins]	
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Chapter 127- Construction, Modification, Reactivation and Operation of Sources				
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Subchapter B - Plan Approval Requirements				
Section 127.13	Extensions	5/19/07	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
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Subchapter E - New Source Review				
Section 127.201	General requirements	5/19/07	[Insert Federal Register publication date] [Insert page number where the document begins]	Paragraphs (d) through (f) added; paragraph(c) revised
Section 127.201a	Measurements, abbreviations and acronyms	5/19/07	[Insert Federal Register publication date] [Insert page number where the document begins]	New
Section 127.202	Effective Date	5/19/07	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
Section 127.203	Facilities subject to special permit requirements	5/19/07	[Insert Federal Register publication date] [Insert page number where the document begins]	Paragraphs (a) through (f) revised
Section 127.203a	Applicability determination	5/19/07	[Insert Federal Register publication date] [Insert	New

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
			<u>page number where the document begins]</u>	
Section 127.204	Emissions subject to this chapter	5/19/07	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
Section 127.205	Special permit requirements	5/19/07	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
Section 127.206	ERC general requirements	5/19/07	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
Section 127.207	Creditable emissions decrease or ERC generation and creation	5/19/07	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
Section 127.208	ERC use and transfer requirements	5/19/07	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
Section 127.209	ERC registry system	5/19/07	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
Section 127.210	Offset ratios	5/19/07	[Insert Federal Register publication date] [Insert	Revised

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
			<u>page number where the document begins]</u>	
Section 127.212	Portable facilities	5/19/07	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
Section 127.213	Construction and demolition	5/19/07	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
Section 127.215	Reactivation	5/19/07	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
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Section 127.217	Clean Air Act Titles III-V applicability	5/19/07	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
Section 127.218	PALs	5/19/07	[Insert Federal Register publication date] [Insert page number where the document begins]	New
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